

REMARKS

Claims 1-3, 5-12, 14-19, 21-23, 31 and 33 are pending and under consideration. Claims 21-23 are withdrawn from consideration as being directed to non-elected inventions. In the Office Action of April 8, 2004, the Examiner made the following disposition:

- A.) Rejected claims 1-3, 5-12, 15-19, 31 and 33 under 35 U.S.C. §103(a) as being unpatentable over *Jonas et al.* in view of *Cheng* and *Kester*.
- B.) Rejected claim 14 under 35 U.S.C. §103(a) as being unpatentable over *Jonas et al.* in view of *Cheng* and *Kester* and further in view of *Beck et al.*

Applicant respectfully traverses the rejections and addresses the Examiner's disposition below:

- A.) Rejection of claims 1-3, 5-12, 15-19, 31 and 33 under 35 U.S.C. §103(a) as being unpatentable over *Jonas et al.* in view of *Cheng* and *Kester*:

Applicant respectfully disagrees with the rejection.

Independent claim 1 has been amended to clarify the claim language. Further, claim 1 has been amended to claim that the height:width ratio of the sidewall effects the container to resist deformation during a hot fill application and to resist deformation during a retort application. Also, claim 1 has been amended to claim that the feet are configured to effect stability of the container on an adjacent surface before, during and after at least one of the hot fill application and the retort application.

Claim 1 claims a blow-molded bowl that has a sidewall with a cross sectional profile that is a smooth continuous curve between the upper rim and the bottom. The sidewall extends radially outwardly before extending radially inwardly as the continuous sidewall extends downward between the upper rim and the bottom to provide a bulging continuous sidewall. The sidewall further has a diameter, which is perpendicular to the central axis and is larger than the height of the bowl, the height being the distance between the bottom and the upper rim. The height:width ratio of the sidewall effects the container to resist deformation during a hot fill application and to resist deformation during a retort application. Further, the feet are configured to effect stability of the container on an adjacent surface before, during and after at least one of the hot fill application and the retort application.

As described in Applicant's specification, containers that are adapted for hot-fill applications possess certain characteristics that allow the containers be merchantable after exposure to the extreme high and low temperature swings associated with hot-fill processes.

Containers that are adapted for retort conditions need to have other characteristics that enable them to remain merchantable after exposure to the high pressures associated with retort conditions. Thus, a container that can remain merchantable after a hot-fill process may not be able to remain merchantable after a retort process -- the container may not hold-up under retort pressures.

Applicant's claimed container is inventively configured to resist deformation during a hot fill application as well as to resist deformation during a retort application. The claimed bowl shape resists paneling and other deformations even during the high pressures associated with a retort process, in which items are first sealed in the container and then the container is subjected to heating and cooling. (Specification, page 7, lines 15-21).

Typical hot-fill-capable plastic containers may not be able to withstand the extreme pressures of a retort process, while typical retort-capable containers may not be able to withstand the extreme temperature swings of a hot-fill process. For example, during a retort process, the straight sidewalls of typical containers deform as heat and internal container pressure contort the typical containers, which fail to regain a merchantable shape. Typical containers that have rounded sidewalls also experience permanent deformation because their sidewalls typically flex and because they do not have Applicant's claimed sidewall geometry.

Jonas in view of *Cheng* and *Kester* clearly fails to disclose or suggest Applicant's claimed container.

Jonas

As discussed above, the claimed shape of Applicant's container effects resistance to deformation during hot fill and retort processes. Referring to *Jonas* Figure 5, *Jonas*'s container fails to even suggest Applicant's claimed shape. Nowhere does *Jonas* even discuss the shape of its sidewall or feet. Instead, *Jonas* merely discusses that a heel portion of its bottom assists during a retort process.

Further, Applicant claims a bowl. *Jonas* specifically teaches away from using a container shape that is a cup or a bowl. (Col. 3, lines 25-32).

Jonas in view of Cheng

The Examiner combines *Jonas*'s container with *Cheng*'s feet in an attempt to disclose or suggest Applicant's claimed container, however, Applicant respectfully submits the combination

still fails to disclose or suggest claim 1. To begin with, *Cheng* is clearly not a hot-fillable or retortable container. First, *Cheng* fails to even describe that its container is suitable for hot-fill or retort applications. And second, one having skill in the art would recognize that *Cheng's* container could not withstand a hot-fill or retort application. *Cheng's* container has long straight sidewalls that would require some type of expansion component to withstand the extreme conditions of a hot-fill or retort process. *Cheng* simply does not teach such a component. *Cheng* describes that its container can withstand the pressures of a carbonated beverage, but *Cheng* fails to disclose a container that can withstand the pressures and temperature conditions of a hot-fill or retort process. As *Cheng* also fails to even teach that its container is suitable for hot-fill or retort applications, *Jonas* in view of *Cheng* still fails to disclose or suggest Applicant's claimed container that is configured to resist deformation during a retort application.

Further, since *Cheng* fails to teach a container suitable for hot-fill or retort applications, *Cheng* could not disclose or suggest feet that effect stability after a hot-fill or retort application.

Therefore, *Jonas* in view of *Cheng* still fails to disclose or suggest Applicant's claim 1.

Jonas in view of Cheng and Kester

Claim 1 is allowable over *Jonas* in view of *Cheng* as discussed above. *Kester* still fails to disclose or suggest a retortable container. For at least this reason, *Jonas* in view of *Cheng* and *Kester* still fails to disclose or suggest Applicant's claim 1.

The Examiner combines *Kester's* continuous-curve sidewall with *Jonas's* container in an attempt to teach Applicant's claimed container sidewall geometry, however, Applicant respectfully submits the combination fails to disclose or suggest Applicant's claim 1. Referring to *Kester* Figures 1-3, *Kester* discloses **ornamental pitchers** 10 and 12 that have open tops with pour spouts. One having skill in the art would not look to these open-topped containers with spouts, that are described in *Kester* as **ornamental pitchers**, as containers that are designed for the extreme hot-fill or retort conditions. Neither of *Kester's* containers 10 or 12 can accommodate a sealable lid, and therefore could not be used in a retort process that requires high pressures within the container. And *Kester* fails to even describe that its containers 10 or 12 have a flexibility, rigidity, material, or shape that can accommodate a hot-fill or retort application. Therefore, *Kester* alone fails to disclose or suggest a hot-fillable or retortable container.

Further, since *Kester's* container has a flat bottom, it would not be suitable for a retort application, because the bottom would deform.

As *Kester* discloses an open-topped, spouted **ornamental pitcher**, and *Jonas* discloses a straight sidewall container, the two containers have completely different geometries and purposes, and therefore there would have been no motivation to combine these containers. The Examiner argues that *Jonas's* container could be reduced in height and combined with *Kester's* curvilinear sidewall, however, that would require some teaching in either reference on the required blow ratios necessary to achieve *Jonas's* required hot-fill capability. That teaching is simply not even suggested in *Jonas* and *Kester*, taken singly or in combination. In fact, *Jonas* specifically teaches a method for making a container with straight sides, not a method for making a container with curvilinear sides.

Further, *Jonas* specifically teaches away from using a container shape that is a cup or a bowl. (Col. 3, lines 25-32). Therefore, one having skill in the art would not have been motivated to combining *Kester's* container shape with *Jonas*.

Therefore, one having skill in the art would not have been motivated to combine *Jonas* with *Kester* to disclose or suggest Applicant's claimed container.

Cheng also fails to provide such motivation, as *Cheng* merely relates to providing feet on a container. In any event, none of the references, taken singly or in combination, even teaches a retortable container.

Accordingly, *Jonas* in view of *Cheng* and *Kester* fails to disclose or suggest claim 1.

Claims 2-3, 5-12, 15-19, 31 and 33 depend directly or indirectly from claim 1 and are therefore allowable for at least the same reasons that claim 1 is allowable.

Applicant respectfully submits the rejection has been overcome and requests that it be withdrawn.

B.) Rejection of claim 14 under 35 U.S.C. §103(a) as being unpatentable over *Jonas et al.* in view of *Cheng* and *Kester* and further in view of *Beck et al.*:

Applicant respectfully disagrees with the rejection.

Applicant's independent claim 1 is allowable over *Jonas* in view of *Cheng* and *Kester* as discussed above. *Beck* still fails to disclose or suggest a container that can withstand a retort process as claimed by Applicant. *Valyi* teaches a container that is similar to *Cheng's* container. *Valyi's* container has long straight sides that have no flexing component to withstand hot-fill or

retort conditions. Further, for the reasons described above with respect to *Beck* and *Cheng*, there would have been no motivation to combine *Beck's* hot-fill container with *Valyi's* container. Therefore, *Beck* in view of *Cheng* and *Kester* and further in view of *Valyi* still fails to disclose or suggest claim 1.

Claim 14 depends directly or indirectly from claim 1 and is therefore allowable for at least the same reasons that claim 1 is allowable.

Applicant respectfully submits the rejection has been overcome and requests that it be withdrawn.

CONCLUSION

In view of the foregoing, it is submitted that claims 1-3, 5-12, 14-19, 31 and 33 are patentable. It is therefore submitted that the application is in condition for allowance. Notice to that effect is respectfully requested.

Respectfully submitted,

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